

THE CITY OF CLAYTON

Board of Aldermen
Virtual Zoom Meeting
August 11, 2020
7:00 p.m.

Minutes

NOTE: In accord with the provisions of Section 610.015, RSMo., and multiple declarations of emergency at every level of government, and the prohibition of large gatherings due to the Coronavirus pandemic, normal requirements for voting in the Board meeting were suspended. Accordingly, votes were taken as if all Board members were physically present and in attendance at the meeting.

Mayor Harris called the meeting to order and requested a roll call. The following individuals were in attendance:

The following individuals were in attendance at the meeting by videoconferencing at all times unless otherwise noted.

Aldermen: Joanne Boulton, Rich Lintz, Ira Berkowitz, Bridget McAndrew, Susan Buse, Dan Sokol, and Mayor Michelle Harris

City Manager David Gipson
City Attorney Kevin O'Keefe
City Clerk June Frazier

The following members were absent: None

Motion made by Alderman Lintz to approve the July 28, 2020 minutes. Alderman Berkowitz seconded.

Motion to approve the minutes passed unanimously on a voice vote.

PUBLIC REQUESTS AND PETITIONS

None

A PUBLIC HEARING AND AN ORDINANCE TO CONSIDER APPROVING A RIGHT-OF-WAY VACATION

Mayor Harris opened the public hearing and requested proof of publication.

City Manager Gipson reported this is a public hearing to solicit input regarding the approval of a right-of-way vacation and subsequent Ordinance to vacate property which is located south of 7827 Davis Drive (Lot 17 of the Davis Place Subdivision) and is a strip of undeveloped and unused right-of-way.

The Board raised questions regarding future use of the property and the possibility of subdividing, also if the City could vacate only a portion of the requested property. City Attorney O'Keefe explained that the City has the option to vacate the right-of-way. The City has a maintenance responsibility and a liability exposure for anyone who is injured on the property. Usually these types of subject rights-of-ways that are adjacent from properties are frequented by kids playing, etc. which he assumes heightens the chances of potential liability to the City.

Mayor Harris closed the public hearing.

City Manager Gipson stated that staff will research the questions and provide answers to the Board.

Motion made by Alderman Boulton to table Bill No. 6803. Alderman Lintz seconded.

The motion passed unanimously on a voice vote.

A RESOLUTION TO CONSIDER APPROVING THE SUBMITTAL OF A MUNICIPAL PARKS GRANT APPLICATION FOR REPLACEMENT OF PLAYGROUNDS IN SHAW PARK

City Manager Gipson reported that included in the City's FY19 Capital Improvement Budget is funding for the replacement of the south playground in Shaw Park with the intent to apply for a St. Louis County Municipal Park Grant of \$420,000. In addition, staff has reached out to the School District and the Clayton Community Foundation for contributions. Regardless of their commitment, the maximum the City will need to contribute is \$22,500, slightly less than what was included in the approved Capital Plan. If successful in receiving the grant, the project will begin in the spring with completion by late summer of 2021.

Motion made by Alderman Boulton to approve the submittal of a Municipal Parks Grant application for the replacement of playgrounds in Shaw Park. Alderman Lintz seconded.

The motion passed unanimously on a voice vote.

A MOTION SETTING THE PUBLIC HEARINGS FOR CONSIDERATION OF THE PROPOSED PROPERTY TAX LEVIES FOR TAX YEAR 2020 (FISCAL YEAR 2021) AND THE FISCAL YEAR 2021 OPERATING AND CAPITAL IMPROVEMENT BUDGET

City Manager Gipson reported that the Board of Aldermen recently received the City Manager's proposed Fiscal Year 2021 (FY 21) Operating and Capital Improvement Budget. The City has also recently received assessed valuation information from St. Louis County for calculating the 2020 (FY 21) property taxes. As part of the property tax and budget process, the Board is required to hold a public hearing to seek public input prior to formal adoption.

Staff is recommending that a public hearing be scheduled for September 8, 2020, at 7:00 p.m. at the regular Board of Aldermen meeting for both the property tax levy hearing, and the Fiscal Year 2021 budget hearing.

Motion made by Alderman Boulton to set September 8, 2020 to hold a public hearing on the proposed Tax Levies for tax year 2020 and the FY2021 Budget. Alderman Lintz seconded.

The motion passed unanimously on a voice vote.

vote.

A MOTION TO APPOINT MEMBERS TO THE BOARDS AND COMMISSIONS

City Manager Gipson reported that individuals have expressed interest in being appointed to or continuing to serve as a member of the following Boards or Commissions of the City. Mayor Harris has reviewed and agrees with the recommendations for appointment or reappointment to the respective Board or Commission and, therefore, submits the following nominations for the Board's consideration.

Economic Development Advisory Committee

Rick Forshaw, Jr. Ward 2 (new appointment for a 3-yr term through June 30, 2023) *-replaces B. Edwards*

Norton Hoffman Chairman

Provisional Municipal Judge

Cynthia Garnholz Ward 2 (reappointment for a 2-yr term through June 30, 2022)

Non-Uniformed Employees Retirement Fund

Amelia Bond Ward 1 (reappointment for a 3-yr term through June 30, 2023)

Steve Singer Ward 3 (reappointment for a 3-yr term through June 30, 2023)

Sustainability Committee

Susannah Fuchs Ward 1 (reappointment for 3-yr term through June 30, 2023)

Angela Flotken Ward 2 (reappointment for a 3-yr term through June 30, 2023)

Motion made by Alderman Boulton to approve the appointments. Alderman Lintz seconded.

The motion passed unanimously on a voice vote.

FINDINGS - APPEAL OF THE ARCHITECTURAL REVIEW BOARD'S DECISION TO APPROVE A GARAGE ADDITION AT 8155 STRATFORD DRIVE

City Attorney O'Keefe reported that the Board received a draft of the proposed findings and order for dispositions of the appeal involving the property of 8155 Stratford Drive. In summary the proposed findings for the appeal of Leigh Szilagyi with regard to ARB conditional approval of a landscape plan for the property at 8155 Stafford Drive is SUSTAINED. The revised landscape plan submitted by Appellant on June 23, 2020, as prepared by Douglas A. DeLong of DeLong Landscape Architecture, LLC. is hereby APPROVED on condition that Appellant complete installation of all required new plantings shown thereon no later than May 1, 2021. (copy of Findings attached)

Motion made by Alderman Boulton to accept the Findings. Alderman Lintz seconded.

The motion passed unanimously on a voice vote.

Other

Alderman Boulton reported:

- Uniformed Employees' Retirement Fund (UERF) met on August 10th; provided an update on the market and the City is doing well.

Alderman Lintz reported:

- Plan Commission/ARB met August 3rd; reviewed various renovations/alterations.

Alderman Berkowitz reported:

- Parks & Recreation Commission met on August 3rd; discussion of grant for the replacement of Shaw Park playgrounds' equipment. Alderman McAndrew commented that the kids will be excited to get the new equipment.

Alderman Sokol reported:

- UERF and NUERF met August 10th; his first meetings which he found interesting and enjoyable adding that the funds are professionally managed; both funds are doing well in these challenging times.

Mayor Harris reported:

- Meeting with the St. Louis County Municipal League Executive Board; they will be discussing the planning and working with the County on COVID funding.
- The Commemorative Landscape Task Force – first meeting scheduled next week.
- City planters – very nice; people are noticing.

City Manager Gipson updated the Board on the outdoor dining barriers; currently there are several restaurants who have taken advantage of placing these outside; some are creatively decorated and are very well received by patrons.

There being no further regular business the meeting adjourned at 7:46 p.m.

Mayor

ATTEST:

City Clerk

BOARD OF ALDERMEN
CITY OF CLAYTON, MISSOURI

In Re: 8155 Stratford Drive)
Appeal of Decision of Architectural Review Board)

Findings and Decision on Appeal

This is an appeal submitted by Leigh Szilagyi ("Appellant"), 8155 Stratford Drive ("Subject Property"), of a decision by the Architectural Review Board ("ARB") on April 6, 2020, conditioning approval exterior alterations and landscaping plan on removal of two existing Bradford Pear trees in the rear yard of the Subject Property.

Pursuant to Section 400.230 of the Municipal Code, an aggrieved party may, within 15 days of the decision for which redress is sought, file with the Board of Aldermen a written request for reconsideration and appeal of any decision of the Architectural Review Board. The written request must set forth in a concise manner the decision being appealed and all grounds known to the appellant as to wherein and why the decision is allegedly in error.

The City Clerk received this appeal on April 21, 2020, and the Board of Aldermen finds such filing to be timely.

Standing

Pursuant to Sec. 400.230 of the Clayton City Code appeals from decisions of the ARB can be taken only by an "aggrieved party."

As specified in Sec. 405.390 an "aggrieved party" is either:

1. The applicant, or
2. One who:
 - a. Suffers a demonstrable and material adverse effect from the decision at issue, and
 - b. Is the owner or occupant of property within two hundred (200) feet of the subject property as measured from all boundaries of the subject property.

Since Appellant was one of the applicants¹ for the ARB approval at issue she has standing to pursue this appeal.

¹ Ms. Szilagyi and her husband, Todd Szilagyi, were both applicants for the ARB approval. Only Ms. Szilagyi signed the instant appeal and is treated her as the sole Appellant. We do

Merits of the Appeal

On February 5, 2018, the Plan Commission and ARB voted unanimously to approve a site plan, landscape plans and architectural plans for construction of a new single-family home on the Subject Property. The approved landscape plan met the City's tree and landscape ordinance and called for the removal of three Bradford Pear trees on the property. Shortly thereafter the existing structure on site was demolished and construction began on the new single-family home.

After completion of construction and landscape installation, a City Inspector performing a final inspection of the property noted that the landscaping had not been installed in accordance with the approved landscape plan. On September 20, 2019, a letter was sent from the City to the developer indicating that the landscaping had not been installed in accordance with the ARB approved landscape plan. The City requested that the developer provide a revised landscape plan to the City for review reflecting the newly installed plantings. Staff review of the revised plan resulted in a determination that the plan changes reduced the native tree component of the landscaping below the regulatory minimum and the design and reduction of species were so significant the revised plan could not be administratively approved.

The approved 2018 landscape plan called for the removal of three existing Bradford Pear trees and installation of additional trees such as: Sugar Maples, Weeping Japanese Maples, three Eastern Redbuds, two Blue Spruces, a Red Maple, and two White Dogwoods. In total, approximately thirteen different plant species that were approved to be installed were not installed and the total number of species was reduced to five. Two of the three Bradford Pear trees that were slated to be removed remained, and the lack of tree planting resulted in a deficiency in the native tree planting requirement.

The property owners asked the ARB to approve a revised plan that included, among other elements, retention of the two remaining Bradford Pear trees. On April 6, 2020, the ARB reviewed the revised landscape plan and voted to 5-2 to approve the revised landscape plan with the following conditions:

1. The applicant shall remove the two Bradford Pears and plant the Red Maple in the northwest corner of the property.

not see this circumstance as in any way having an effect on Appellant's standing or the Board's authority to hear and decide the appeal.

2. The applicant shall plant trees that are listed as Missouri native and shall meet the 33 percent native requirement.

The Board of Aldermen heard Appellant's appeal and received evidence offered by Appellant on May 12, 2020, and took the matter under submission.

Shortly thereafter, through the city attorney, the Board advised Appellant that the evidence before the Board of Aldermen did not establish whether the property can reasonably be landscaped in such a way as to fulfill the maple tree and minimum native planting requirements in a healthy and appropriate manner that affords all plantings the space, light and other resources need to grow and be properly maintained while preserving the Bradford Pear trees at issue. The Board offered Appellant an opportunity to prepare and submit a complete landscape plan by a qualified professional satisfying the maple tree and minimum native planting requirements for review by the City's consulting landscape/arboreal professionals and City staff.

Appellant has now submitted such a plan and city staff and consultants have found the revised plan to satisfy all relevant landscaping standards while preserving the two Bradford Pear trees at issue in an appropriate circumstance.

The Board notes that the current situation is unique in many respects. The new construction and related original landscape plan were designed for a different owner. The current property owners acquired the property after the construction was started and, not altogether unreasonably, sought to deviate from the approved landscape plan to suit their own tastes and circumstances (primarily by elimination of a pool that was originally to have been installed in the rear yard near the Bradford Pear trees at issue here).

The Board also agrees with the ARB that Bradford Pear trees are an invasive species and should not be newly planted and that their retention should be discouraged when substantial landscaping revisions are being reviewed by that body. But our review of the city's ordinances also informs us that retention of existing Bradford Pear trees is not specifically prohibited by ordinance. In addition, the facts as to the condition of the Bradford Pear trees is an issue in substantial dispute, and new evidence on that point was presented to this Board by the Appellant.


We do not view the appeal process as a vehicle by which this Board should substitute its judgment for that of the ARB. But Section 400.240 of the City Code authorizes this Board to "approve, modify or disapprove the application" which is the subject of the appeal. Clearly this code provision instructs the

Board that we are to conclude the regulatory review process based on the evidence before us on appeal.

The review and appeal process for this landscaping has been protracted and time-consuming for all concerned. And we are sensitive to the fact that installing landscaping is seasonally sensitive. For these reasons we believe it is appropriate for us to modify the conditional approval previously granted by the ARB by approving the revised landscape plan recently submitted to this Board.

WHEREFORE, the appeal of Leigh Szilagyi with regard to ARB conditional approval of a landscape plan for the property at 8155 Stratford Drive is SUSTAINED. The revised landscape plan submitted by Appellant on June 23, 2020, as prepared by Douglas A. DeLong of DeLong Landscape Architecture, LLC. is hereby APPROVED on condition that Appellant complete installation of all required new plantings shown thereon no later than May 1, 2021.

Adopted by the Board of Aldermen of the City of Clayton this 11th Day of August 2020.


Mayor

Attest:


City Clerk